SUBJECT INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	4
Conclusion	5
Appendices:	
Appendix A	A-1

TABLES OF AUTHORITY

Table of Cases

Chicago B. & O. Ry. Co. v. Nebraska, 170 U.S. 57	5
Columbia R. Gas and E. Co. v. South Carolina, 261 U.S. 236	4-5
Home Bldg. and Loan Assoc. v. Blaisdell, 290 U.S. 398	5
Peoples National Bank of Washington v. National Bank of Commerce of Seattle, 69 Wn.2d 682, 420 P.2d 208 (1966)	5
Simpson v. Cox, 167 Wash. 34, 8 P.2d 424 (1932)	4
Tidal Oil Co. v. Flanagan, 263 U.S. 444	4

Constitutional Provisions

United States Constitution, Article 1, Section 10 ..... 2, 3, 5

Statutes

RCW 19.52.020 ..... 2-3, 4

IN THE

Supreme Court of the United States

October Term, 1970

No. .....

LARRY L. STEVENS and GLORIA STEVENS, his wife; and WILLIAM G. BOYD and JANE DOE BOYD, his wife,
Petitioners,

v.

J. LAWRENCE BUCKLEY and ALMA E. BUCKLEY, his wife; and ALMA KATHLEEN OGLE, as Executrix of the estate of J. Lawrence Buckley; and ROBERT J. CADRANELL and CARMEN CADRANELL, his wife; and RORERT L. CADRANELL and JANE DOE CADRANELL, his wife; and ROY W. MYERS and VIRGINIA MYERS, his wife,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON (DIVISION No. 1, SEATTLE, WASHINGTON)

The petitioners, Larry L. Stevens and Gloria Stevens, his wife, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Washington, Division No. 1, at Seattle, Washington, made and entered November 16, 1970 (Petition for rehearing denied on the 21st day of December, 1970.) Petitioners were denied a review by the Washington State Supreme Court by order of January 19, 1971.

OPINION BELOW

The opinion of the Court of Appeals for the State of Washington appears in the Appendix hereto. No opinion was rendered by the Washington State Supreme Court.

JURISDICTION

The opinion and judgment of the Court of Appeals for the State of Washington, Division No. 1, Seattle, Washington, was entered on November 16, 1970. A timely petition for rehearing was denied on the 21st day of December, 1970. A writ of review to the Supreme Court of the State of Washington was denied on January 19, 1971. This petition for certiorari was filed within 90 days of the latter date. This court's jurisdiction is invoked under the United States Constitution, Article 1, Section 10, forbidding a state from impairing the obligation of a contract. Under the usury statute of the State of Washington the burden of *disproving usury* is placed upon the *lender*. (Italics ours)

QUESTIONS PRESENTED

1. Are the petitioners protected against a judicial decision which so construes a state usury statute that it impairs a contract by destroying its remedy?

2. Does a state court decision, placing the burden of proof upon a lender of monies to disprove usury, impair rights under a private contract?

STATUTES INVOLVED

"Revised Code of Washington (R.C.W.) 19.52.020 Usury-Penalty upon suit on contract. If a greater rate of *interest* than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore,

be void; but if in any action on such contract *proof be made that a greater rate of interest* has been directly or indirectly contracted for or taken or reserved, the plaintiff shall only recover the principal, less the amount of interest accruing thereon at the rate contracted for..." (Italics ours)

The United States Constitution, Article 1, Section 10, provides in part:

> "No State shall . . . pass any . . . law impairing the obligation of contracts. . ."

STATEMENT OF THE CASE

In February of 1963 the respondents, Cadranells, borrowed the sum of $22,000 with interest at 12% per annum from Petitioners to remodel their Yacht Marina and restaurant in Seattle, Washington. The loan was secured by assignments of their leasehold interests and income in the marina and restaurant, a real property note and mortgage upon respondents' home and chattel mortgage on the equipment and fixtures in the restaurant.

The monies loaned to the Cadranells came from the respondents, Buckleys, but the trial judge found that they were petitioner's own funds. This finding permitted the trial court to sustain a usury charge by the Cadranells after they refused to repay their loan. At the same time it permitted judgment in favor of the Buckleys upon peitioner's promissory note to them for $22,000 without the taint of usury.

Petitioners charged a fee of 10% (labeled "finder's fee" or "commission" by the parties) of the total loan to Cadranells for spending better than one month checking and analyzing the securities for the loan and their financial strength to repay. The trial court found it was a "finder's

fee" *and therefore "interest."* It was uncontroverted that a charge of 10% or $2200 was fair and reasonable for the work done by appellants. (Italics ours)

Despite the lack of evidence that the fee charged was for the use of money and *therefore "interest"* under the usury statute, the trial court in effect switched the burden to petitioners to disprove the assertion of usury under the terms of the statute.

On appeal, the Court of Appeals simply upheld the finding of the trial judge that, as a "finder's fee," $2200 was an additional charge for a loan of money and therefore interest.

REASONS FOR GRANTING THE WRIT

The decision below impairs petitioner's rights under private contract by so construing a state usury statute that the burden of disproof is placed upon the lender when any fee is charged. The statute is quasi-penal in nature and there must be a clear violation of its terms. *Simpson v. Cox,* 167 Wash. 34, 8 P.2d 424 (1932). The central question was whether a charge of $2200 is "interest" under the statute (RCW 19.52.020), not whether the findings were supported by the record.

Constitutional protection exists against a judicial decision which so construes a state statute that it effects an impairment of a contract obligation. *Tidal Oil Co. v. Flanagan,* 263 U.S. 444. Nor is this court limited to the consideration of the language of the opinion, but may examine the substance and effect of the decision since the decision may impliedly give effect to the state statute and impair the obligation of the contract, although not expressly mentioned. *Columbia R. Gas and E. Co. v. South Carolina,* 261

U.S. 236. The prohibition of the Federal Constitution of legislation impairing contract obligations applies to legislation acting directly on the contract itself or on the remedy. *Home Bldg. and Loan Asso. v. Blaisdell,* 290 U.S. 398.

Without evidence that the fee charge was for the use of the money loaned, Petitioners were placed in the unique position of *disproving the assertion.* The decision below that a "finder's fee" is by its nature for the use of money would seem to be nothing more than a legal conclusion which placed the burden of disproof wrongly upon petitioners under the statute.

Recognizing that petitioners could have made a charge for services in connection with the loan, the decision nevertheless impliedly thrusts upon the petitioners the burden of disproof under the state usury statute, *Peoples National Bank of Washington v. National Bank of Commerce of Seattle,* 69 Wn.2d 682, 420 P.2d 208 (1966). Such a statutory interpretation violates the integrity of private contract. *Chicago B. & O. Ry. Co. v. Nebraska,* 170 U.S. 57; Constitution, Art. I, Sec. 10.

The real substance and effect of the decision herein denies appellant's remedy under a bona fide contract. It places an impossible burden of disproof upon him by labeling the charge "interest" and calling it a question of fact.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Court of Appeals.

Respectfully submitted,

ROBERT H. STEVENSON
Counsel for Petitioners

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

J. LAWRENCE BUCKLEY and ALMA E. BUCKLEY, his wife; and ALMA KATHLEEN OGLE, as Executrix of the Estate of J. LAWRENCE BUCKLEY, *Respondents,* v. LARRY L. STEVENS and GLORIA STEVENS, his wife; and WILLIAM G. BOYD and JANE DOE BOYD, his wife, *Appellants,* and ROBERT J. CADRANELL and CARMEN CADRANELL, his wife; and ROBERT L. CADRANELL and JANE DOE CADRANELL, his wife, *Respondents,* and ROY W. MYERS and VIRGINIA MYERS, his wife, *Defendants.*	No. 279-41107-I DIVISION ONE, PANEL TWO

UTTER, J. — Larry L. Stevens and William G. Boyd, appellants, loaned $22,000 to Robert J. Cadranell and others in his family and took in exchange a note payable at 12 per cent per annum. The Cadranells were charged with a $2,200 finder's fee and were required to give security interests in certain property they owned. On February 5, 1963, appellants were loaned $22,000 by J. Lawrence Buckley and his wife, who were given a promissory note by appellants. The money was paid to the Cadranells after the funds were received from the Buckleys.

The Cadranells later stopped making payments on their note and appellants also stopped making at that time to the Buckleys. The Buckleys sued appellants on their note.

Appellants denied liability and demanded the Buckleys foreclose their alleged security interest against the Cadranells, which they claimed was held in trust for the Buckleys' benefit. The Cadranells were joined by appellants who sought foreclosure of their security and judgment over on the Cadranell note. The Cadranells cross-claimed against appellants, setting out the defense of usury, and appellants in turn denied usury, alleging the $2,200 was a proper charge for services performed for the Cadranells in investigating their financial ability before making the loan.

Two separate transactions were found to exist by the court which granted the Buckleys a judgment against appellants for the amount due on their note and allowed the Cadranells an offset judgment on their cross-claim against appellants for usury in a sum equal to the entire amount due.

The assignments of error and arguments on appeal of appellants raise the basic question whether the challenged findings are supported by the record.

Although the documentary evidence and testimony is in conflict, there is support in both the oral testimony of the parties and their correspondence for the findings made by the trial court that the transactions between appellants and the Cadranells, and appellants and the Buckleys were separate transactions. The trial court's finding the $2,200 was a finder's fee is unchallenged.

Error is assigned to that portion of a finding of fact holding, "Said finders [*sic*] fee was in fact an additional interest charge by . . . [appellants] for their loan of money to the Cadranells." There are cases which hold a lender may charge a fee for services rendered when the fee charged

is reasonable and is not a commission for making the loan or payment for the use of money. *Peoples Nat'l Bank of Wash. v. National Bank of Commerce of Seattle,* 69 Wn.2d 682, 420 P.2d 208 (1966); *Testera v. Richardson,* 77 Wash. 377, 137 P. 998 (1914). The determination of this issue is a question of fact. Although the record indicates appellants went to considerable effort to satisfy themselves there was good security for the loan they were making, the evidence further shows appellants, in addition to the finder's fee, charged the Cadranells specifically for a credit report, title insurance premiums, attorney's fees and an escrow fee. The evidence does not compel us to find, as a matter of law, that the money charged as a finder's fee was strictly for services rendered, was reasonable and was not a commission for making the loan or a payment for use of money.

The cases have given the term "finder's fee" a meaning which is supportive of the trial court's determination and have defined it as compensation in the nature of a commission. *Davidson v. Robie,* 345 Mass. 333, 187 N.E.2d 371, 374 (1963); *Cray, McFawn & Co. v. Hegarty, Conroy & Co.,* 27 F. Supp. 93 (D.C.N.Y. 1939).

The trial court's determination that the charge was a finder's fee rather than a charge for services rendered is supported by substantial evidence. As a finder's fee charged by the lenders, the record further supports the finding of fact that it was an additional charge for a loan of money and therefore usurious. We find the other challenged findings and conclusions supported by the record.

The judgment of the trial court is affirmed.

We concur:

s/ HOROWITZ, J.

s/ UTTER, J.

s/ WILLIAMS, J.

Supreme Court, U.S.

In the

Supreme Court of the United States

October Term, 1970

No. 1595

LARRY L. STEVENS and GLORIA STEVENS, his wife; and WILLIAM G. BOYD and JANE DOE BOYD, his wife,
Petitioners,

v.

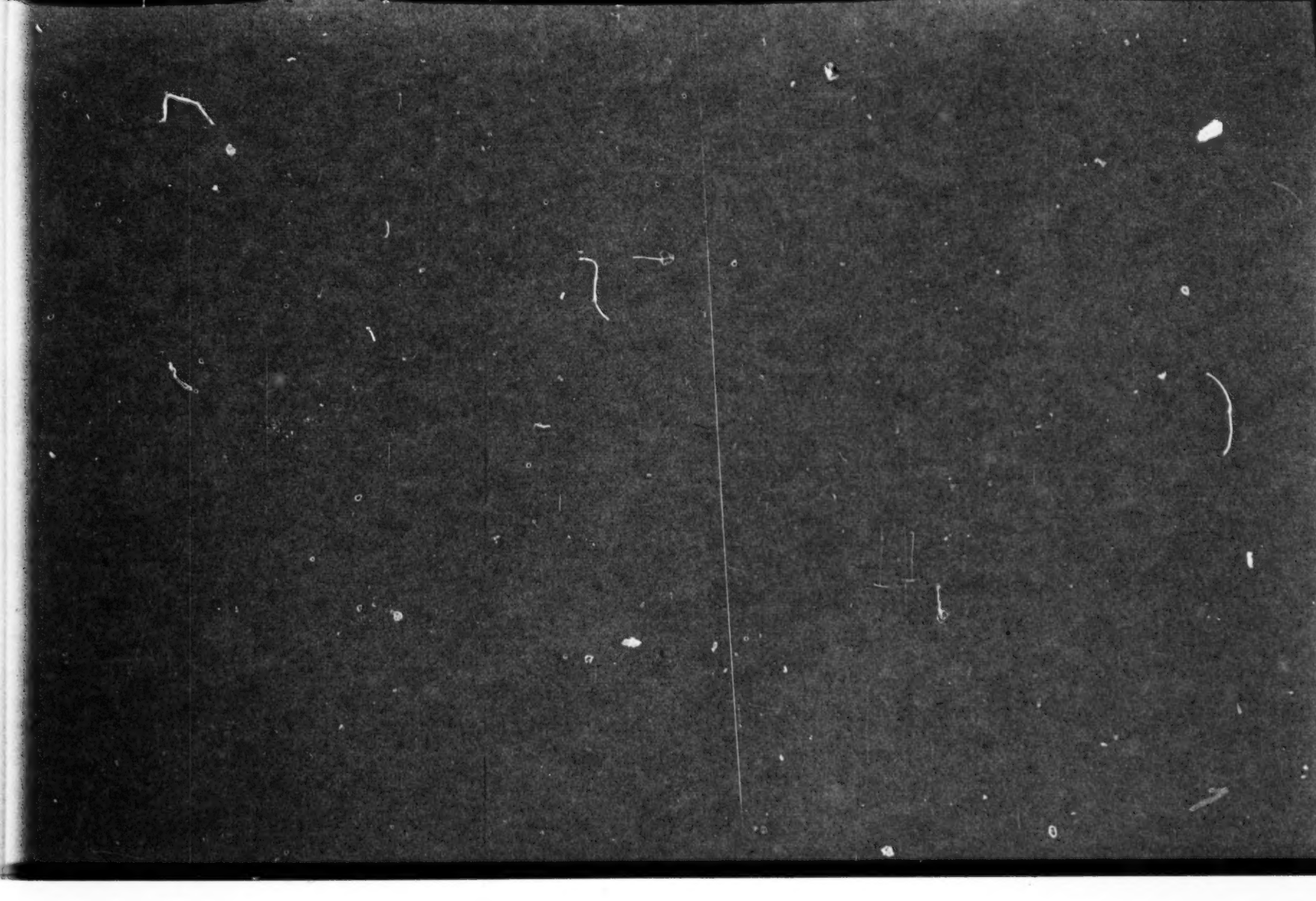
J. LAWRENCE BUCKLEY and ALMA E. BUCKLEY, his wife; and ALMA KATHLEEN OGLE, as Executrix of the estate of J. LAWRENCE BUCKLEY; and ROBERT J. CADRANELL and CARMEN CADRANELL, his wife; and ROBERT L. CADRANELL and JANE DOE CADRANELL, his wife; and ROY W. MYERS and VIRGINIA MYERS, his wife,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON (DIVISION No. 1, SEATTLE, WASHINGTON)

GEORGE S. COOK
Counsel for Respondents, Robert J. Cadranell and Carmen Cadranell, his wife.

Office and Post Office Address:
1518 IBM Building
Seattle, Washington 98101

SMITH-EMERY & CO. PRINTERS SEATTLE, WASHINGTON



SUBJECT INDEX

	Page
Jurisdiction	2
Questions Presented	3
Statement of the Case	4
Conclusion	4

TABLES OF AUTHORITY

Constitutional Provisions

United States Constitution, Article I, Section 10..... 2

IN THE

Supreme Court of the United States

October Term, 1970

No.....

LARRY L. STEVENS and GLORIA STEVENS, his wife; and WILLIAM G. BOYD and JANE DOE BOYD; his wife,
Petitioners,

v.

J. LAWRENCE BUCKLEY and ALMA E. BUCKLEY, his wife; and ALMA KATHLEEN OGLE, as Executrix of the estate of J. LAWRENCE BUCKLEY; and ROBERT J. CADRANELL and CARMEN CADRANELL, his wife; and ROBERT L. CADRANELL and JANE DOE CADRANELL, his wife; and ROY W. MYERS and VIRGINIA MYERS, his wife,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF WASHINGTON (DIVISION No. 1, SEATTLE, WASHINGTON)

The respondents, Robert J. and Carmen Cadranell, his wife, are hereby responding to the Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington, Division No. 1, Seattle, Washington for the purpose of clarifying the issues which the petitioners raise in their Petition.

JURISDICTION

Petitioners allege that they are invoking the jurisdiction of this court under the United States Constitution, Article I, Section 10, forbidding a state from impairing the obligation of a contract. The respondents refer to the full text of the Opinion of the Court of Appeals of the State of Washington set forth in the Appendix to the Petition at page A-1. A reading of this opinion which is very brief clearly indicates that the court's decision does not impair the obligation of any contract but simply applies the usury statute of the State of Washington to the facts found to exist by the trial court which the Court of Appeals indicates were supported by substantial evidence.

The petitioners further state that "under the usury statute of the State of Washington the burden of *disproving usury* is placed upon the *lender.*" Neither the opinion of the Court of Appeals referred to above nor any ruling or decision of any kind either by the trial court or the Court of Appeals indicates that the burden of disproving usury is placed upon the lender. The respondents properly pleaded the defense of usury and presented the evidence considered by the trial court to be sufficient to carry the burden of proof that there was a charge by the lender of a "finder's fee" which was in fact an additional interest charge by the petitioners for their loan of money to the respondents and the Court of Appeals after reviewing the record of all the evidence states: "the record further supports the finding of fact that it was an additional charge for a loan of money, and therefore usury." Page A-3.

QUESTIONS PRESENTED

Petitioners set forth two questions as follows:

> "1. Are the petitioners protected against a judicial decision which so construes a state usury statute that it impairs a contract by destroying its remedy?"

Again the respondents refer to the decision of the Court of Appeals which simply affirms the trial court's finding of fact that there was an additional charge for money loaned by the petitioners in excess of the rate allowed by the usury law of the State of Washington. The remedy under the contract is destroyed not by a court decision but by the fact that the lender charged more than the allowable rate of interest under the Washington Usury Law.

> "2. Does a state court decision, placing the burden of proof upon a lender of monies to disprove usury, impair rights under a private contract?"

This question is actually not presented by the circumstances now before this court inasmuch as neither the decision of the trial court nor the decision of the Court of Appeals for the State of Washington nor any other ruling in this matter has placed the burden of proof upon the lender of monies to disprove usury. No issue was ever raised before the court as to who had the burden of proof but in any event it is obvious from the decisions of both the trial court and the Court of Appeals that the evidence presented by the borrower was sufficient to establish usury. The borrower presented substantial evidence including documents prepared by the petitioners to prove that there was a charge made to the borrowers designated by the lenders as a "finder's fee" and from all the evidence presented in the case the trial court was satisfied that this was in fact an additional charge for the loan of money by the lenders to the borrowers.

STATEMENT OF THE CASE

Petitioners state at the top of page 4 of their Petition that: "It was uncontroverted that a charge of 10% or $2200 was fair and reasonable for the work done by appellants." This is misleading inasmuch as there was no concession or agreement of any kind on the part of the respondents, the borrowers, that such a charge was a fair and reasonable charge for work done by appellant. And the Court of Appeals in its decision on page A-3 of the Petition states:

> "The determination of this issue is a question of fact. Although the record indicates appellants went to considerable effort to satisfy themselves there was good security for the loan they were making, the evidence further shows appellants, in addition to the finder's fee, charged the Cadranells specifically for a credit report, title insurance premiums, attorney's fees and an escrow fee. The evidence does not compel us to find, as a matter of law, that the money charged as a finder's fee was strictly for services rendered, was reasonable and was not a commission for making the loan or a payment for use of money."

CONCLUSION

As pointed out above, it should be obvious from a reading of the decision of the Court of Appeals of the State of Washington and if the Findings of Fact and Conclusions of Law and Judgment of the trial court and the documentary evidence submitted to the trial court is available that would also definitely show that there was substantial evidence that the lenders made a charge in excess of the rate allowed by the Washington Usury Statute and the trial court simply decided as a Finding of Fact that there was in fact such a charge and the Court of Appeals merely

confirmed the trial court's findings after reviewing the matter. This situation does not give rise to any issue about impairing rights under a contract or destroying a remedy under the contract, nor does it give rise to any shifting of the burden to the lender to disprove usury. The Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington should be denied.

Respectfully submitted,

GEORGE S. COOK
Counsel for Respondents,
Robert J. Cadranell and
Carmen Cadranell, his wife.